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grand jury, charging the defendant with the same crime. The defendant thereafter filed the present Motion to Dismiss for Lack of Jurisdiction, contending that because of the pending appeal, this court has no jurisdiction to entertain the prosecution.

The appeal is premature. *See Parr v. United States*, 351 U.S. 513, 517 (1956) (holding that a defendant cannot immediately appeal an order dismissing an indictment without prejudice, but rather “[t]he testing of the effect of the dismissal order must abide [the defendant’s] trial, and only then, if convicted, will he have been aggrieved”); *United States v. Lanham*, 631 F.2d 356, 357-58 (4th Cir. 1980) (same). Because the present appeal is defective, this court did not lose jurisdiction over the prosecution. *See United States v. Hitchmon*, 602 F.2d 689, 694 (5th Cir. 1979) (en banc) (holding that filing a notice of appeal from a nonappealable order does not divest the district court of jurisdiction), *superseded by statute on other grounds as recognized in United States v. Martinez*, 763 F.2d 1297, 1308 (11th Cir. 1985); *Waterson v. Hall*, 515 F.3d 852, 855 (8th Cir. 2008) (same).

For these reasons, it is **ORDERED** that the Motion to Dismiss (#25) is DENIED.

ENTER: October 15, 2008

/s/ JAMES P. JONES  
Chief United States District Judge